IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10587 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIPAK KUMAR MOHANBHAI JADAV

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10587 of 2002

MR AS SUPEHIA for Petitioner No. 1

MR MEHTA, AGP for Respondent No. 1

MR DC DAVE for Respondent No. 2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 22/01/2003

ORAL JUDGEMENT

Rule. Mr. Mehta, learned AGP waives notice of

rule for respondent No.1 and Mr. D.C.Dave appears for respondent No. 2 and waives notice of rule. With the consent of the parties, the matter is taken up for final hearing today.

The short facts of the case are that the father of the petitioner was serving as driver under Taluka Development Officer, Rajkot and he died on 20th September, 1995 while he was in service. The petitioner had applied for compassionate appointment but the same is denied on the ground that the income of the family of the petitioner exceeds Rs.2,500/-.

Mr. Mehta, learned AGP has submitted during the course of the arguments that as per the para-wise comments received by him from the Panchayat Department of the State Government, the income of the family is calculated as Rs.3,132/- per month comprising of the income of Rs.1,400/towards labour etc. and Rs.1,722/towards family pension, D.A., Medical and other allowances. He fairly submitted that the application has been rejected on the ground that the income exceeds Rs.2,500/-.

In my view, the question involved in this petition is covered by various judgements of this Court including the decision given by this Court today in Special Civil Application No. 9835 of 2002 and the view taken in all these matters are while calculating the income of the family for eligibility criteria for compassionate appointment, the income of the family pension is required to be excluded. Since the matter is covered by the decision, no elaborate discussion is required. Applying the same criteria, if the present case is examined then out of the total amount of Rs.3,132/- per month income if the amount of Rs.1,722/- towards family pension and other allowances is excluded the income of the family of the petitioner will go below Rs.2,500/per month and therefore, the respondents are not justified in denying the consideration for compassionate appointment of the petitioner on the ground that the income of the family exceeds Rs.2,500/-.

In view of the above discussion, the decision of the respondent to reject the application of the petitioner for compassionate appointment on the ground that the income of the family exceeds Rs.2,500/- is quashed and set aside. The respondents are directed to consider the case of the petitioner for compassionate appointment on the ground that the income of the family of the deceased-employee is below Rs.2,500/- and the

respondents are directed to consider all other aspects and take the decision as early as possible preferably within three months from the date of receipt of the order of this Court.

Petition is allowed to the aforesaid extent. Rule made absolute accordingly. No costs.

(Jayant Patel,J.)
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